IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.592 of 1995
Date of decision:30.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s Adinath Textiles Limited, Chandigarh Road, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 23.11.1994 in ITA No.916/chandi/89, for the assessment year 1984-85:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in allowing ESA on new machinery added during the year on the basis of the working of a concern as a whole and not on the basis the machinery worked for requisite number of days?"

We find that the issue has been gone into by the Hon'ble Supreme Court in **South India Viscose Ltd. v. Commissioner of Income-Tax** (1997) 227 ITR 286, wherein it was observed at page 300:-

> "For the reasons aforementioned, it must be held that extra shift allowance had to be calculated on the basis of number of days during which the concern had actually worked double shift or triple shift and the said allowance was not required to be calculated on the basis of the number of days a particular item of machinery or plant had worked double shift or triple shift. We are, therefore, unable to uphold the impugned judgment of the High Court in this regard. In our opinion, the

> Tribunal had rightly held that the extra shift allowance had to be calculated on the basis of the number of days on which the concern worked as a whole double shift or triple shift and not on the basis of each item of machinery being used in double shift or triple shift. Question No.4 must, therefore, be answered in the affirmative, i.e., in favour of the assessee and against the Revenue."

Following the above judgment, the question has been decided against the revenue and in favour of the assessee in ITR No.9 of 1995, **The Commissioner of Income tax, Patiala v. M/s Hind Woollen & Hosiery Mills, Ludhiana**, decided on 5.9.2006.

Accordingly, the question referred in the present case is also answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 30,2006 (Rajesh Bindal)
'gs' Judge